

REMARKS AND RESPONSE TO RESTRICTION REQUIREMENT

Amendment

Applicants have canceled claims 1-6 and added claims 7-24 by this Preliminary Amendment. Claims 7-24 are now pending. Support for claims 7-24 can be found throughout the application and original claims as filed, for example, in original claims 1-9 and on page 33, lines 21-22, and page 11, lines 3-5. No new matter has been introduced.

Applicants bring to the Examiner's attention U.S. Patent No. 6,340,668; issued in the parent application on January 22, 2002.

Response to Restriction Requirement

In a restriction requirement dated May 21, 2004, the Examiner required restriction under 35 U.S.C. § 121 between:

Group I (bovine sequence): Claims 1-6, to the extent they are drawn to a method of comprising the administration of a BMP-11 polypeptide comprising the amino acid sequence of SEQ ID NO: 2; and

Group II (human sequence): Claims 1-6, to the extent they are drawn to a method comprising the administration of a BMP-11 polypeptide comprising the amino acid sequence of SEQ ID NO: 11.

New claims 7, 10, 13, 16, and 19 encompass both SEQ ID NO:2 and SEQ ID NO:11, and are generic to Groups I and II. New claims 8, 9, 11, 12, 14, 15, 17, 18, and 20-24 are drawn specifically to SEQ ID NO:11, and fall into Group II.

Applicants provisionally elect, with traverse, to prosecute Group II, claims 7-24, inasmuch as they pertain to a method comprising the administration of a BMP-11 polypeptide comprising the amino acid sequence of SEQ ID NO: 11.

However, Applicants believe that this restriction requirement is improper. While the Examiner has alleged that the claims are drawn to independent and distinct inventions, he has not shown that it would be a burden to examine the claims together. The law requires that both (1) the inventions are independent and distinct, and (2) there would be a serious burden on the Examiner if restriction was not required. M.P.E.P. § 803. The Examiner has focused on only the first part of this two-part test. In order to properly restrict the groups, the Examiner needs to show that there would be a serious burden in examining the claims together.

Applicants believe that there would not be a serious burden in examining the groups together. Specifically, the groups are directed to methods for using bovine and human BMP-11 sequences in the same class and subclasses (class 514, subclass 12). Furthermore, as the two groups both relate to corresponding BMP-11 sequences in different species, Applicants believe searches could easily be constructed to identify any prior art to both sequences. Thus, Applicants believe it would not be a burden to examine all the claims together. Thus, applicants request that the restriction requirement be withdrawn.

Please grant any extensions of time required to enter this response and charge
any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: June 21, 2004

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